

**REMARKS**

Applicant acknowledges receipt of the Office Action mailed November 21, 2006.

In the Office Action, the Examiner objected to the specification, rejected claim 8 under 35 U.S.C. § 112, second paragraph; rejected claims 1-6, 8, 9, 12-14, and 17-19 under 35 U.S.C. § 102(b) as being anticipated by *Sopena Quesada* (U.S. Patent No. 4,353,363); rejected claims 1-3, 5, 6, 8, 9, 12-14, and 17-19 under 35 U.S.C. § 102(e) as being anticipated by *Anderson et al.* (U.S. Patent No. 5,816,248); rejected claim 11 under 35 U.S.C. § 103(a) as being unpatentable over *Sopena Quesada*; rejected claim 11 under 35 U.S.C. § 103(a) as being unpatentable over *Anderson*; rejected claims 1-3 and 6 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,770,288; and objected to claim 7 as being dependent upon a rejected base claim but allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In this Amendment, Applicant amends the specification and claims 1 and 8, and adds new claim 20. Upon entry of this Amendment, claims 1-9, 11-14, and 17-20 will be pending. Of these claims, claim 1 is independent.

The originally-filed specification, claims, abstract, and drawings fully support the amendments to the specification and claims 1 and 8. No new matter has been introduced.

Applicant gratefully acknowledges the Examiner's indication of allowable subject matter in claim 7. Applicant, however, has not rewritten claim 7 to include all of the limitations of the base claim and any intervening claims because at least independent claim 1 is patentably distinguishable over the cited prior art.

Based on the foregoing amendments, Applicant traverses the objection and rejections above and respectfully requests reconsideration for at least the reasons that follow.

**I. OBJECTION TO THE SPECIFICATION**

The specification stands objected to for the use of the trademark “Velcro”. Specifically, the Examiner asserts, “[Velcro] should be capitalized wherever it appears and be accompanied by the generic terminology.” (*Office Action*, p. 2, paragraph 2). Applicant submits that the objection to the text at page 8, line 8 of the specification has been rendered moot by the amendments to the specification. Applicant therefore requests that the objection to the specification be withdrawn.

**II. 35 U.S.C. § 112, SECOND PARAGRAPH, REJECTION**

Claim 8 stands rejected under 35 U.S.C. § 112, second paragraph. Applicant submits that the rejection of claim 8 has been rendered moot by the amendments to claim 8. Applicant therefore requests that the rejection of claim 8 under 35 U.S.C. § 112, second paragraph, be withdrawn.

**III. 35 U.S.C. § 102 REJECTIONS**

Applicant traverses the rejection of claims 1-6, 8, 9, 12-14, and 17-19 under 35 U.S.C. § 102(b) as being anticipated by *Sopena Quesada*. Applicant respectfully submits that amended independent claim 1 patentably distinguishes over *Sopena Quesada* at least for the reasons described below.

In order to properly establish that *Sopena Quesada* anticipates Applicant's claimed invention under 35 U.S.C. § 102, each and every element of each of the claims in issue must be found, either expressly described or under principles of inherency, in

that single reference. Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” See M.P.E.P. § 2131, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

*Sopena Quesada* appears to disclose an intrauterine spermicide including “a support body onto which is wound a copper spiral acting as a spermicide. The support body has extending therefrom two arched arms which are oriented to extend toward the oviducts. Each of the arms has at its free end a copper mass which is housed in the tip of the respective oviduct.” (*Sopena Quesada*, Abstract).

*Sopena Quesada*, however, does not disclose a substance delivery device including a pod capable of releasing a drug contained within a matrix of the pod into a body cavity (emphases added). Rather, *Sopena Quesada* discloses the use of a copper wire to release copper ions as a spermicide in the body cavity.

As supported by Applicant’s specification on page 7, lines 13-15, “the pods may comprise a cellulose matrix which allows the leaching of drugs contained within the matrix into the fluids of the body cavity.” The matrix allows the slow release of drugs contained therein into the fluids of the body cavity (emphasis added).

Accordingly, with respect to independent claim 1, *Sopena Quesada* fails to teach Applicant’s claimed combination, including, *inter alia*:

“wherein each resilient arm is capable of receiving and releasing a separate pod capable of releasing a drug contained within a matrix of the pod into [a] body cavity” (emphasis added).

Since *Sopena Quesada* fails to disclose each and every element of independent claim 1, *Sopena Quesada* fails to anticipate claim 1, and claims 2-6, 8, 9, 12-14, and 17-19 that depend from claim 1. Therefore, claims 1-6, 8, 9, 12-14, and 17-19 are patentable over *Sopena Quesada*. Applicant further submits that new dependent claim 20 is patentable over *Sopena Quesada* at least due to its dependence from independent claim 1.

Applicant traverses the rejection of claims 1-3, 5, 6, 8, 9, 12-14, and 17-19 under 35 U.S.C. § 102(e) as being anticipated by *Anderson*. Applicant respectfully submits that amended independent claim 1 patentably distinguishes over *Anderson* at least for the reasons described below.

*Anderson* appears to disclose a vaginal insert for delivering an agent to a urogenital tract in a patient. “Examples of passive delivery include natural absorption. Examples of active delivery include iontophoresis; phonophoresis; and magnetophoresis, which involves magnetic activation of the agent.” (*Anderson*, Abstract and col. 3, ll. 52-55).

*Anderson*, however, does not disclose a substance delivery device including a pod capable of releasing a drug contained within a matrix of the pod into a body cavity (emphases added).

Accordingly, with respect to independent claim 1, *Anderson* fails to teach Applicant's claimed combination, including, *inter alia*:

“wherein each resilient arm is capable of receiving and releasing a separate pod capable of releasing a drug contained within a matrix of the pod into [a] body cavity” (emphasis added).

Since *Anderson* fails to disclose each and every element of independent claim 1, *Anderson* fails to anticipate claim 1, and claims 2, 3, 5, 6, 8, 9, 12-14, and 17-19 that depend from claim 1. Therefore, claims 1-3, 5, 6, 8, 9, 12-14, and 17-19 are patentable over *Anderson*. Applicant further submits that new dependent claim 20 is patentable over *Anderson* at least due to its dependence from independent claim 1.

#### **IV. 35 U.S.C. § 103(a) REJECTIONS**

Applicant respectfully traverses the Examiner's rejection of claim 11 under 35 U.S.C. § 103(a) as being unpatentable over *Sopena Quesada*, and the rejection of claim 11 under 35 U.S.C. § 103(a) as being unpatentable over *Anderson*. The shortcomings of *Sopena Quesada* and *Anderson* are discussed above. Accordingly, claim 11 is allowable at least due to its dependence from independent claim 1.

#### **V. DOUBLE PATENTING REJECTION**

Claims 1-3 and 6 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,770,288. Although Applicant respectfully disagrees the Examiner's rejection, in an effort to advance prosecution of this application, Applicant has filed a Terminal Disclaimer with respect to U.S. Patent No. 6,770,288. Accordingly, Applicant respectfully submits that the Examiner's double patenting rejection is moot and the rejection of claims 1-3 and 6 should be withdrawn.

#### **VI. CONCLUSION**

Applicant respectfully submits that claims 1-9, 11-14, and 17-20 are in condition for allowance.

The Office Action contains characterizations of the claims and the related art with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: May 21, 2007

By: /David W. Hill/  
David W. Hill  
Reg. No. 28,220

**Attachment:** Terminal Disclaimer